IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7467 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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M/S. RAKESHKUMAR BANSILAL - Petitioner(s)
Versus
BHAGYODAY COOPERATIVE BANK LTD. & ORS. - Respondent(s)

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Appearance :
SHRI PRAKASH K. JANI for Petitioner(s).
Though name of SHRI VIJAY H. PATEL appears for Respondent No.1, but, there is no representation.
None for other Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/11/2006

ORAL JUDGMENT

1. By the present Writ Application under Article 227 of the Constitution of India, the petitioner seeks to challenge Order dated 14th August, 1995 passed in Revision

Application No.178 of 1995 by the Gujarat State Cooperative Tribunal, Ahmedabad, whereunder the order passed by the learned Board of Nominee, Ahmedabad in Lavad Suit No.978 of 1986 on 4th July, 1995, whereunder the petitioners' application for grant of amendment was rejected, was challenged.

2. Shri Jani, learned Counsel for the petitioner, submits that the petitioners had filed a suit seeking damages against illegal sealing of the premises by the Bank/respondent on the ground that the action was absolutely illegal. The suit came to be filed in the year 1986, but, an application for amendment was made in the year 1995. By the application, the petitioner wanted to incorporate further pleas that the action of the Officers of the Bank/Bank was illegal, it was contrary to law, it was contrary to the powers conferred upon them and was also contrary to the policy of the customer/Bank relationship. The application was rejected by the Board of Nominees mainly on the ground that it was belated. The order was thereafter confirmed by the Cooperative Tribunal. The Tribunal taking altogether a different view observed that if the present petitioner was aggrieved by the action taken by the Bank or its Officers, then, the petitioner was required to take recourse to the

provisions of Section 93, read with Sections 84, 86 and 87 of the Gujarat Cooperative Societies Act.

3. In a suit for damages, the plaintiff virtually challenges the inaction, wrong action, malfeasance or misfeasance on the part of the defendant. Unless it is held by a competent Court that the action of the other side was bad or contrary to law and it had caused some losses to the plaintiff, no Court would be entitled to grant decree for damages. The relief of damages in itself includes a plea of declaration that the action of the other party was wrong and if that be so, the declaration if is also prayed for, no wrong in amplification of the pleadings could be found.

4. The orders passed by the learned Board of Nominee and confirmed by the Appellate Tribunal are hereby quashed. The petitioner's application for amendment is allowed. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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